

ID: CCA_2012011716372760

Number: **201224031**

Release Date: 6/15/2012

Office:

UILC: 7602.00-00

From:

Sent: Tuesday, January 17, 2012 4:37:32 PM

To:

Cc:

Subject: Connecticut Statute Question

Per our telephone conversation last Monday, this email is in response to the issues you asked us to consider regarding Connecticut General Statute (CGS) 1-217. In particular, you questioned whether CGS 1-217 [which prohibits public entities from disclosing, under the Connecticut Freedom of Information Act (FOIA), residential addresses of certain protected categories of persons (e.g., firefighters, police officers, criminal attorneys, etc.)] would prevent IRS personnel from obtaining this kind of information about a taxpayer if the taxpayer being investigated is a member of a protected category. In addition, you wanted to know what recourse our employees have to gain access to this information if the statute is valid. Because these issues are not ripe in that the IRS has not yet sought information on an individual falling within a protected category, you asked that we only provide a very brief summary of our position.

As a preliminary matter, the Connecticut FOIA is inapplicable here. The IRS as a federal agency, through our federal employees on official federal business, does not make state FOIA requests to obtain/gather federal law enforcement information/evidence. Instead, the IRS would make an official request for such information on the basis that the information is needed for a federal law enforcement purpose.

If an entity refuses to comply with our official federal law enforcement request for information, the IRS can then seek the information by issuing an administrative summons under IRC 7602 to the entity.

Should the entity file a motion to quash the summons, we would then present our reasons why the summons under federal law should be enforced. We would explain that the state FOIA law is inapplicable here and that the Supremacy Clause mandates that federal law governs. The federal district court case, Massanari v. Northwest Community Mental Health Center, 2001 WL 1518137 (W.D.N.Y. Nov. 7, 2001), is instructive. In Massanari, Northwest Community Mental Health Center refused to comply with a federal subpoena issued by the Social Security Administration (SSA) for an individual's medical records on the basis of a state law, which prohibited the disclosure of such records except in 13 limited circumstances, none of which covered the subpoena issued by SSA. The court stated that "[w]here there is a conflict between federal law which mandates an action and state law which prohibits that action such that compliance with both laws is impossible, then, pursuant to the Supremacy Clause, the state law is considered a nullity and the federal law governs." Id. at *1. The court held that the state law was inapplicable and ordered Northwest Community Mental Health Center to comply with the subpoena. See also In re Grand Jury Subpoena for New York State Income Tax Records, 468 F. Supp. 575, 577 (N.D.N.Y. 1979) ("by virtue of the supremacy clause, state legislation must yield whenever it comes into conflict with an Act of Congress").

Lastly, it is our understanding from our conversation last Monday that you discussed the above-described issues with an attorney in the U.S. Attorneys Office in Connecticut and he agreed with the above approach in dealing with the matter.

If you have questions, or require anything further, please feel free to contact me.